Calendar No. 253

102D CONGRESS *1st Session*	SENATE	REPORT 102-169

COAST GUARD AUTHORIZATION ACT OF 1991

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1297

OCTOBER 3 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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REPORT
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COAST GUARD AUTHORIZATION ACT OF 1991

OCTOBER 3, (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1297]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1297) to authorize appropriations for the Coast Guard for fiscal years 1992 and 1993, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

S. 1297 authorizes appropriations for the U.S. Coast Guard for fiscal years (FY) 1992 and 1993, covering six appropriations accounts: (1) operating expenses (OE); (2) acquisition, construction, and improvement of equipment and facilities (AC&I); (3) research and development (R&D); (4) retired pay; (5) alteration or removal of bridges; and (6) environmental compliance and restoration. The reported bill also authorizes end-of-year military strength and training loads, requires oil spill equipment for the new Coast Guard buoy tender to be manufactured in the United States, repeals the Coast Guard recreational vessel fee, and makes other changes to existing law.

BACKGROUND AND NEEDS

As the second largest entity within the Department of Transportation, the Coast Guard is the principal Federal maritime safety and law enforcement agency. Its typical civilian activities include vessel safety inspection, the rescue of life and property at sea, fishery law enforcement, marine environmental protection, and the

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interdiction of drug trafficking. In addition, the agency carries out port security functions, cooperates closely with the other Armed Forces in military readiness activities, and has the lead responsibility for the coastal defense of the United States. In time of war and national emergency, the Coast Guard becomes an arm of the U.S. Navy.

The Coast Guard's authorization legislation expires at the end of FY 1991, and the Committee strongly supports reauthorization at levels that will permit the continuation of existing functions without reduction. Over the past several years, the Coast Guard's drug interdiction efforts in the southeast United States have been remarkably successful. Maritime smuggling of marijuana has slowed dramatically and smuggling by air has been curtailed. The success of these law enforcement efforts, coupled with the enactment of the Oil Pollution Act of 1990 (OPA), has led the Coast Guard to refocus some of its operating budget on marine environmental protection. The Committee strongly supports this redirection. The Coast Guard, in taking the lead in carrying out the mandate of the OPA, will administer the Oil Spill Liability Trust Fund, and maintain 3 strike teams, 10 district response groups, and a national response unit.

COAST GUARD VESSEL FEES

Since the early 1980s, first the Reagan administration and then the Bush administration pressed for the enactment of Coast Guard recreational user fees. They maintained that such fees would "require recreational boaters to share in the cost of existing Coast Guard programs, including search and rescue, boating safety, and aids to navigation, for which no direct user fee may be assessed, but which provide substantial benefits to recreational boaters." Last year, Congress enacted a recreational boater user fee as part of the Omnibus Budget Reconciliation Act of 1990 (Budget Act of 1990).

On July 1, 1991, the Coast Guard published a final rule to implement the user fee for recreational boaters. The Budget Act of 1990 directs the Coast Guard to establish and collect recreational boater fees from FY 1991 through 1995. Funds generated by the user fees do not support directly Coast Guard activities but rather are deposited in the general fund of the Treasury as offsetting receipts of the Coast Guard.

To ensure that only those who actually receive benefits from Coast Guard services pay user fees, Congress limited the fees to vessels longer than 16 feet operating in waters "where the Coast Guard has a presence." In the final rule, the Coast Guard defined the term "where the Coast Guard has a presence" to encompass coastal areas and the Great Lakes, as well as certain inland waters. To determine the inland waters to which the fee applied, the Coast Guard developed a "16-foot boat test." This test makes the fees applicable on those inland waters from which a 16-foot-long powered vessel with a displacement-type hull can navigate to coastal waters. The test generally excludes landlocked lakes. However, boaters on many rivers and a number of lakes with locks will be required to pay the fees.

Legislative History

A coast Guard authorization hearing of the full Committee and National Ocean Policy Study was held on April 17, 1991. Testimony was received from the Commandant of the Coast Guard (Commandant), Adm. J.W. Kime, concerning the agency's budget and other related issues. S. 1297 was introduced on June 14, 1991, by Senator Hollings and is cosponsored by Senators Kerry, Breaux, and Stevens.

On July 18, 1991, the House of Representatives passed H.R. 1776, a bill similar to S. 1297. H.R. 1776 was subsequently referred to the Committee.

In open executive session on July 30, 1991, the Committee considered an amendment in the nature of a substitute for S. 1297. The substitute included the language of S. 1297 and a number of other provisions. At the markup, four additional amendments were offered:

(1) an amendment by Senator Breaux, which embodied the text of S. 843, introduced by Senator Breaux and cosponsored by 24 Members, including Senators Hollings, Kasten, Lott, Ford, Pressler, and Burns on the Committee, to repeal the Coast Guard recreational vessel fee;

(2) An amendment by Senator Robb embodying the text of S. 1068, introduced by Senator Warner and cosponsored by Senator Robb, designating a portion of the Appomattox River as nonnavigable;

(3) An amendment by Senator Gorton directing discussions with Canada on vessel traffic safety off the Strait of Juan de Fuca; and

(4) An amendment by Senator Kerry directing that the acquisition of the Commandant's plane be by competitive bid. Senator Kerry withdrew his amendment. The other amendments were adopted. Without objection, the Committee then ordered the substitute, as further amended, to be reported.

Summary of Major Provisions

As reported, S. 1297 contains provisions applicable to Coast Guard appropriations, end-of-year military strength, and training loads for FY 1992 and FY 1993. The reported bill is generally consistent with the administration's budget request, although the AC&I account for FY 1992 is authorized at a level slightly higher than requested. Also, the reported bill requires the Coast Guard to select an American-built oil recovery system for installation on the new oceangoing buoy tenders. In addition, the legislation repeals the Coast Guard recreational vessel fees.

Appropriations are authorized in the following amounts:

[Dollar amounts in millions]

	Fiscal Year—	
	1992	1993
OE	$2,569.5	$2,569.5
AC&I	452.0	423.0
R&D	28.8	28.8

[Dollar amounts in millions]

	Fiscal Year—	
	1992	1993
Retired Pay	487.7	519.0
Alt. Bridges	10.2	10.2
Envtl. Compl.	25.1	25.1

Other provisions in the reported bill:

—designate the John F. Limehouse Memorial Bridge in Charleston County, SC, an obstruction to navigation;

—call for a study concerning joint enforcement of marine sanctuary regulations between the Coast Guard and the National Oceanic and Atmospheric Administration (NOAA);

—authorize the Coast Guard to convey the Cape May Point Lighthouse to the State of New Jersey;

—authorize the Coast Guard to convey the Portland Head Lighthouse to the Town of Cape Elizabeth, ME; and

—authorize up to $14 million for the renovation of the Coast Guard Cutter *Mackinaw*.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 16, 1991.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1297, the Coast Guard Authorization Act of 1991. Enactment of S. 1297 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1297.

2. Bill title: Coast Guard Authorization Act of 1991.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation on July 30, 1991.

4. Bill purpose: S. 1297 would authorize fiscal year 1992 appropriations of $3.1 billion to the U.S. Coast Guard (USCG) for discretionary programs, including $2.57 billion for operating expenses,

$452 million for acquisition and other capital projects, $28.8 million for research activities, $10.2 million for bridge alterations, and $25.1 million for environmental compliance. In aggregate, this authorization level is $59 million above the President's 1992 budget request and $289 million above the amount appropriated for 1991. The bill would also authorize 1993 appropriations totaling $3.1 billion for these accounts. Of this amount, $423 million would be authorized for capital projects; authorizations for all other accounts would be identical to their 1992 levels. Of the amounts authorized for operating expenses in each year, $35 million would be expended from the Boat Safety account (Aquatic Resources Trust Fund) and $31.1 million would be derived by transfer from the Oil Spill Liability Trust Fund (OSLTF). The OSLTF would similarly be tapped each year for $26.8 million of the amounts authorized for capital projects.

S. 1297 would also authorize the appropriation of $487.7 million in 1992 for retirement pay to eligible personnel.

In addition, the bill would:

authorize (subject to the appropriation of funds) the USCG to enter into long-term leases of real property located near Charleston, South Carolina and Cape Cod, Massachusetts. These provisions would also authorize the agency to spend appropriated funds for capital projects at the leased sites;

designate the John F. Limehouse Memorial Bridge in South Carolina as an unreasonable obstruction to navigation;

repeal Section 2110(b) of Title 46, United States Code, which requires the Secretary of Transportation to impose certain fees on recreational boaters; and

mandated various studies and make technical amendments to statutes governing USCG regulatory programs, administrative procedures, and other activities.

5. Estimated Cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1195	1996
Direct spending:					
Estimated budget authority	135	143	152	161	
Estimated outlays	135	143	152	161	
Authorizations:					
Authorization level	3086	3057			
Less: Existing authorizations	−93	−93			
Net additional authorizations	2,993	2,964			
Estimated outlays	2,069	2,504	789	434	122

The costs of this bill fall within budget functions 300 and 400. A portion of Coast Guard expenses are sometimes funded in the defense appropriations bill and recorded in function 050.

The $487.7 million provided for Coast Guard retirements has not been included in the above table because such pay is an entitlement under current law, requiring no annual authorization.

Basis of Estimate

Discretionary Programs.—For purposes of this estimate, it is assumed that S. 1297 will be enacted early in fiscal year 1992. It is further assumed that appropriations for USCG programs during 1992 and 1993 will be equal to the full amounts authorized under Section 2. Gross authorization levels are those specified in that section for discretionary accounts. As shown in the table, the stated authorization levels have been reduced by $92.8 million each year to reflect the fact that appropriations from the Boat Safety account ($35 million) and the OSLTF ($57.8 million) are already authorized under existing laws. Outlays have been estimated on the basis of historical spending patterns for these programs.

Certain bill provisions may increase the costs of long-term USCG projects carried out under existing laws. While these provisions may require the authorization and/or appropriation of additional funds, CBO is unable to estimate such future funding needs at this time. For example, Section 2(c) would prevent the Coast Guard from purchasing any oil recovery system unless it is (1) manufactured in the United States and (2) acquired under a competitive process that evaluates bids on the bases of performance specifications and cost. This provision could increase the cost of acquiring oil spill equipment in two ways. First, by restricting the number of suppliers that may compete for this business, the subsection would probably cause the price that the Coast Guard must pay to increase. Second, the bill would prevent the agency from requiring the equipment to employ a specific, proven process. Forcing it to instead rely on performance specifications would (in this case) expose the acquisition program to greater risk that the equipment purchased would not meet the agency's needs and could necessitate additional testing to determine whether it does. If the delivered oil recovery equipment fails to meet Coast Guard standards, additional costs may be incurred to replace, supplement or modify the product. CBO is unable to quantify the precise impact of Section 2(c) on the agency's acquisition program.

Also, Section 12 of the bill would deem South Carolina's John F. Limehouse Memorial Bridge to be an unreasonable obstruction to navigation, thereby making future structural changes to it eligible for federal cost-sharing funds under the Truman-Hobbs Act (33 U.S.C. 511 et seq). Under that act, the USCG finances a portion of the costs of altering or removing bridges that are determined to be unreasonable obstructions in navigable waterways. The federal share of such costs is determined for each project on the basis of relative benefits and often exceeds 90 percent. While the contribution may be lower for this project. CBO expects that the government would probably finance a major portion of the estimated $15 million aleration cost (assuming appropriation of the necessary amounts).

Costs of other bill provisions are assumed to be funded within the levels authorized generally for USCG activities under Section 2. In most cases, these would be largely short-term, one-time expenses incurred to implement mandated regulatory changes, facilitate land conveyances, and prepare studies or reports. With the exception of Section 22, which would require up to $14 million of the

agency's funds to be spent on the renovation of the cutter MACKINAW during fiscal year 1992, such provisions would not involve any significant portion of the authorized USCG budget.

The bill's authorization levels are also assumed to include all funding for the long-term rental of state or local public lands under Sections 8 and 9. The two agreements are likely to contain similar provisions (including a minimum lease period of 30 years) to protect the government's investment on nonfederal lands. While rental and other stipulated charges for the two properties would probably be different, reflecting differing local planning policies and other site specifics, lease payments are expected to be nominal in both cases. Total lease costs for both sites together would probably be less than $60,000 over the expected 30-year lease period.

Direct Spending Effects.—For purposes of this estimate, it is assumed that the repeal of recreation boat fees under Section 26 would be effective upon the bill's enactment early in fiscal year 1992. The repeal would result in the loss of offsetting receipts in each of the fiscal years 1992 through 1995, after which the authority to collect such fees will expire. Based on annual fee projections contained in the fiscal year 1992 budget resolution baseline, the loss of receipts would increase direct spending outlays by $135 million during 1992 and by $591 million over the four-year period.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 specifies pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that the enactment of S. 1297 would result in increased outlays of $135 million in 1992, $143 million in 1993, $152 million in 1994, and $161 million in 1995, as a result of the repeal of the recreation boat fees.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On June 24, 1991, CBO prepared an estimate for H.R. 1776, the Coast Guard Authorization Act of 1991, as ordered reported by the House Committee on Merchant Marine and Fisheries on May 2, 1991. The two estimates reflect differences in the authorization levels and periods as well as other provisions.

10. Estimate prepared by: Deborah Reis.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

S. 1297 authorizes appropriations to continue existing Coast Guard programs and makes several changes to existing law. However, it will result in no additional regulation. Therefore in general it will not increase the number or type of individuals and businesses regulated or the paperwork required from such individuals and businesses and will not otherwise affect the economic impact of such regulation or the personal privacy of affected individuals. Section 26 of the bill, as reported, repeals the Coast Guard recreational vessels fee. Repeal of this fee would reduce the number of individuals regulated and the paperwork required with respect to Coast

Guard fees, and would have an economic impact on those to whom these fees would apply.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

The bill maybe cited as the "Coast Guard Authorization Act of 1991."

SECTION 2—AUTORIZATION OF APPROPRIATIONS

This section would authorize funds for FY 1992 and FY 1993 in accordance with the following tables:

Fiscal Year 1992

[Dollar amount in millions]

Line	*Amount*
OE	$2,569.50
AC&I	452.00
Research and development	28.80
Retired pay	487.70
Bridge alteration	10.20
Environmental compliance and restoration	25.10

Fiscal Year 1993

[Dollar amount in millions]

Line	*Amount*
OE	$2,569.50
AC&I	423.00
Research and development	28.80
Retired pay	519.00
Bridge alteration	10.20
Environmental compliance and restoration	25.10

This section further requires that funds authorized for constructing seagoing buoy tenders may not be expended to acquire oil recovery systems unless the systems are manufactured in the United States and only pursuant to competitive bidding based on performance specification and cost.

SECTION 3—AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FY 1992

This section would authorize a Coast Guard FY 1992 end-of-year strength of 39,559 active duty personnel, which does not include members of the Ready Reserve. This section also would authorize average military training student loads as follows:

Training	*Student years*
Recruit	2,653
Flight	110
Professional	362
Officer	878

SECTION 4—AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FY 1993

This section would authorize a Coast Guard FY 1993 end-of-year strength of 39,559 active duty personnel, which does not include members of the Ready Reserve. This section also would authorize average military training student loads as follows:

Training	*Student years*
Recruit	2,653
Flight	110
Professional	362
Officer	878

SECTION 5—RETIREMENT OF REAR ADMIRALS

This section would amend provisions of title 14, U.S. Code, concerning the continuation of rear admirals on active duty. Under the new provisions, rear admirals and rear admirals (lower half) (except for Chief of Staff) will be retired after 7 years of service as a flag officer unless selected for appointment to admiral, vice admiral, Chief of Staff, or Superintendent of the Coast Guard Academy. The Commandant, with the approval of the Secretary of Transportaion (Secretary) may retain flag officers who have served beyond the 7-year limit on a year-to-year basis. These provisions are intended to create increased opportunity for advancement through the ranks and to supplement existing mandatory retirement mechanisms such as the 36-year service limit.

SECTION 6—ENLISTED PERSONNEL BOARDS

This section would amend section 357 of title 14, U.S. Code, to eliminate the need for two personnel boards in order to retire involuntarily an enlisted member. Currently, if a member protests a personnel board's recommendation of retirement, a subsequent annual board must again recommend that the member be retired. Section 357, as amended, would provide that members be notified in writing of the reasons for being considered for involuntary retirement, allowed 30 days to submit a rebuttal with the assistance of counsel provided to him or her, and allowed full access to and be furnished copies of relevant records. The member would be retired within 90 days of the board's recommendation for retirement, if the recommendation is approved by the Commandant. These procedures would not be required during mandated reductions in force.

SECTION 7—AUTHORITY TO ACCEPT COURT-ORDERED COMMUNITY SERVICE

This section expands the list of the general powers of the Commandant in section 93 of title 14, U.S. Code, to allow the Commandant to utilize the services of those performing community service under court order. This addition to the list of general powers does not require the Coast Guard to accept such services, but authorizes it to do so under the terms and conditions it establishes.

SECTION 8—HOUSING UNIT LEASE AUTHORITY

This section provides the Coast Guard with the authority necessary to enter into a long-term lease of property with the State of Massachusetts in order to make improvements in existing housing units it will acquire from the Air Force at Otis Air Force Base, Massachusetts. A long-term lease of the underlying property is required to enable the Coast Guard to make improvements in existing units and to construct future units, if necessary. The specific authority to enter into such a lease is required to overcome the limitations of section 1341(a)(1) of title 31, U.S. Code, prohibiting

long-term leases because they require obligation of funds before they are appropriated, as well as restrictions on the use of appropriated funds for making improvements on private property, 42 Comp. Gen. 480 (1963).

SECTION 9—AIR FACILITIES LEASE AUTHORITY

This section provides the authority necessary for the Coast Guard to implement plans to construct a new, permanent air facility on private property in Charleston, SC. This specific authority is required to overcome the prohibition on long-term leases and restrictions on the use of appropriated funds for making improvements on private property.

SECTION 10—COAST GUARD HOUSING STUDY

This section requires the Secretary to provide Congress with a report examining housing problems and needs of the Coast Guard and estimating the costs of relieving these problems.

SECTION 11—COAST GUARD ACADEMY ADVISORY COMMITTEE

This section amends section 193 of title 14, U.S. Code, to extend the Coast Guard Advisory Committee termination date for 2 more years until September 30, 1994, consistent with the requirements of the Federal Advisory Committee Act.

SECTION 12—JOHN F. LIMEHOUSE MEMORIAL BRIDGE

This section designates the John F. Limehouse Memorial Bridge, a swing span bridge across the Atlantic Intracoastal Waterway in Charleston County, SC, as an unreasonable obstruction to navigation.

SECTION 13—NATIONAL BOATING SAFETY ADVISORY COUNCIL

This section amends section 13110 of title 46, U.S. Code, which requires the Secretary to establish a National Boating Safety Advisory Council. The authorization for the Council was set to expire on September 30, 1991, 5 years from the date of reauthorization by the Recreational Boating Safety Act of 1986. This amendment reauthorizes the Council for an additional 5 years, consistent with the previous reauthorization and the Federal Advisory Committee Act.

SECTION 14—EMERGENCY RECALL OF RESERVISTS

This section alters the procedures under which Coast Guard Reservists are recalled to active duty. Section 712 of title 14, U.S. Code, provides authority for the Secretary to augment regular Coast Guard forces with members of the Coast Guard Ready Reserve in the event of domestic emergency, such as a serious natural or manmade disaster, accident, or catastrophe. The President first must approve such recalls. At present, upon recall, a Reserve member may not serve on active duty for more than 14 days in any 4-month period and not more than 30 days in any 1-year period. This section extends those periods to 30 days in any 4-month period, not to exceed 60 days in any 2-year period, and provides for a more expeditious recall procedure.

SECTION 15—RECALL OF RETIRED OFFICERS

This section increases the limit on the number of retired officers that may be recalled for active duty from 1 percent to 2 percent of the authorized number of officers on active duty in each such grade. This provision improves the Coast Guard's ability to recall retired officers, with their consent, to active duty to perform specific projects.

SECTION 16—AMENDMENT OF INLAND NAVIGATIONAL RULES

This section amends the Inland Navigational Rules Act of 1980 to conform the Inland Navigational Rules as closely as possible to the International Regulations for Preventing Collisions at Sea, 1972. Rule 1(e) of the Inland Navigational Rules at present requires that vessels show that they cannot achieve full compliance with respect to lights, shapes, and sound signaling "without interfering with the special function of the vessel" in order to be permitted to use alternative compliance measures. This section eliminates the need to make such a showing, but still requires that vessels be in "closest possible compliance" with those rules. Rule 8 of those rules, which deals with the actions of vessels necessary to avoid collision, is amended by this section to specify in more detail the obligations of a vessel that is required under the rules not to impede the passage or safe passage of another vessel.

SECTION 17—REQUIREMENTS FOR CERTAIN VESSELS

This provision extends the exemption for the vessel *"Delta Queen"* by 5 years from November 1, 1993 to November 1, 1998. This section also requires that the owner or managing operator of the vessel report any alterations of the vessel to the Coast Guard. Such alterations must comply with Coast Guard requirements concerning noncombustible material, consistent with preserving the historic integrity of the vessel.

SECTION 18—STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS

This section directs the Secretary and the Secretary of Commerce to submit to Congress a joint report concerning joint enforcement of marine sanctuary regulations by the Coast Guard and NOAA. The Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431 et seq., provides for boarding and seizure of vessels used in violation of that Act and, pursuant to civil proceeding, forfeiture of vessels and penalties for violating sanctuary regulations. The present level of sanctuary enforcement is not sufficient to prevent or punish violations of these regulations. Further, implementation of new regulations for the Florida Keys and Monterey Bay sanctuaries will require increased efforts and better coordination of Coast Guard and NOAA enforcement measures. The Secretary of Commerce is directed to identify for the Secretary the key enforcement problems at each marine sanctuary. Using this information, the Secretary shall evaluate the Coast Guard's ability to address those problems, propose coordination procedures between

the two agencies, and recommend levels of Coast Guard participation.

SECTION 19—CONVEYANCE OF CAPE MAY POINT LIGHTHOUSE

This section authorizes the Coast Guard to convey to the State of New Jersey, without payment, all right, title, and interest of the United States in and to property comprising the Cape May Point Lighthouse at Cape May Point Lighthouse at Cape May, NJ. This section conveys not only the lighthouse but also certain specified buildings and property. The property is required to be used by the State for the public benefit as a nonprofit center for the interpretation and preservation of Coast Guard culture and maritime history of Cape May, NJ. The property would revert to the United States if it ceases to be used for such purposes. This provision also makes the conveyance conditional upon continued access to the property by the Coast Guard for maintenance and operation of active aids to navigation located on the property. However, the State of New Jersey would not be required to perform maintenance on any active aid-to-navigation equipment.

SECTION 20—CONVEYANCE OF PORTLAND HEAD LIGHTHOUSE

This section authorizes the Coast Guard to convey to the Town of Cape Elizabeth, without payment, all right, title, and interest of the United States in and to property comprising the Portland Head Lighthouse at Cape Elizabeth, ME. This section conveys not only the lighthouse but also certain specified buildings and property. The property is required to be used by the town for the public benefit as a nonprofit center for the interpretation and preservation of Coast Guard culture and maritime history of Cape Elizabeth, ME. The property would revert to the United States if it ceases to be used for such purposes. This provision also makes the conveyance conditional upon continued access to the property by the Coast Guard for maintenance and operation of active aids to navigation located on the property. However, the Town of Cape Elizabeth would not be required to perform maintenance on active aid-to-navigation equipment.

SECTION 21—OREGON OIL SPILL RESPONSE STUDY

This section directs the Coast Guard to conduct a study to determine the adequacy of oil spill response equipment pre-positioned in Astoria, OR, to respond to oil spills on the Columbia River, with particular emphasis on the port of Portland, OR. The study should consider the particular characteristics of a spill or discharge into the Columbia River, the specific procedures and equipment necessary to prevent or limit environmental damage, the overlapping jurisdictions of the neighboring States, and the multiplicity of State and Federal oil spill response statutes. The study should determine whether procedures and equipment in place are adequate to contain and clean up an oil spill or discharge on the Columbia River. In conducting the study, the Coast Guard should consult with local organizations such as the Portland Maritime Fire and Safety Association.

SECTION 22—COAST GUARD CUTTER MACKINAW RENOVATION

This section authorizes the Secretary to spend up to $14 million on the renovation of the Coast Guard Cutter *Mackinaw.*

SECTION 23—EXTENSION OF FISHING VESSEL ADVISORY COMMITTEE

This section extends the term of the Fishing Vessel Advisory Committee by 2 years, through FY 1994.

SECTION 24—DECLARATION OF NONNAVIGABILITY

This section declares a portion of the Appomattox River in Chesterfield and Dinwiddie Counties, VA, to be nonnavigable within the meaning of the Constitution and the laws of the United States, except for the purposes of the Federal Water Pollution Control Act. This provision is necessary to address a technical problem in the construction of a small hydroelectric facility by the Appomattox River Water Authority (Authority). The Authority has proposed to build a hydroelectric facility at an existing dam. Because the facility is on the navigable waters of the United States, permits from a number of Federal agencies, including the Federal Energy Regulatory Commission (FERC), are required. The Authority has been offered a FERC license, but is unable to accept the license because of a conflict between the license and the Authority's charter. This provision exempts the project from Federal jurisdiction.

SECTION 25—VESSEL SAFETY NEAR STRAIT OF JUAN DE FUCA

This section directs the Coast Guard, through the Secretary of State, to enter into discussions with the Canadian Government to examine alternatives to improve commercial vessel traffic safety off the entrance to the Strait of Juan de Fuca.

SECTION 26—COAST GUARD RECREATIONAL BOAT TAX REPEAL

This section repeals the Coast Guard recreational vessel fee which was passed as part of the Budget Act of 1990.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 14, UNITED STATES CODE

Section 93 of that Title

§ 93. Commandant; general powers

(a) through (p) * * *

(q) establish, install, abandon, re-establish, change the location of, operate, maintain, and repair radio transmitting and receiving stations; [and]

(r) provide medical and dental care for personnel entitled thereto by law or regulation, including care in private facilities[.]; *and*

[(r) provide medical and dental care for personnel entitled thereto by law or regulation, including care in private facilities.]

(s) accept and utilize, under such terms and conditions as are deemed advisable by the Commandant, services of individuals performing community service under the order of a Federal, State, or municipal court.

Section 193 of that Title

§ 193. Advisory Committee

The Secretary may appoint an Advisory Committee to the Academy, consisting of not more than seven persons of distinction in education and other fields relating to the purposes of the Academy, who shall serve without pay (or, in the case of a member of the Committee who is an officer or employee of the United States, who shall receive no additional pay on account of his service on the Committee). Members of the Advisory Committee shall be appointed for terms of not to exceed three years and may be reappointed. The Secretary shall, in June of each year, appoint one of the members to serve as chairman. The members so appointed shall visit the Academy at least once during the academic year on the call of the chairman and may convene once each year at Headquarters, at the call of the Commandant, for the purpose of examining the course of instruction and advising the Commandant relative thereto. Each member of the Committee shall be reimbursed from Coast Guard appropriations in conformity with the provisions of chapter 57 of title 5. The Secretary shall, not less often than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Advisory Committee. The Advisory Committee is authorized to make available to Congress any information, advice, and recommendations which the Advisory Committee is authorized to give to the Secretary or the Commandant. The Committee terminates on [September 30, 1992] *September 30, 1994.*

Section 290 of that Title

§ 290. Rear admirals and real admirals (lower half); continuation on active duty; involuntary retirement

(a) The Secretary shall from time to time convene boards to recommend for continuation on active duty the most senior officers on the active duty promotion list serving in the grade of rear admiral (lower half) or rear admiral who have not previously been considered for continuation in that grade. Officers serving for the time being or who have served in the grade of vice admiral or in the position of Chief of Staff are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued in the grade of rear admiral. A board shall consist of at least five officers serving in the grade of vice admiral or as rear admirals previously continued. Boards shall be convened frequently enough to assure that each officer serving in the grade of rear admiral (lower half)

or rear admiral is subject to consideration for continuation during a promotion year in which [he] *that officer* completes not less than four or more than five years combined service in the grades of rear admiral (lower half) and rear admiral.

(b) through (c) * * *

(d) A board convened under this section shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After [his] final review the Secretary shall submit the report of the board to the President for [his] approval.

(e) Each officer who is considered but not continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on [June 30 of] *July 1 of the promotion year immediately following* the promotion year in which the report of the continuation board convened under this section is approved.

[(f)] Each officer who is continued on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on June 30 of the promotion year in which he completes a total of thirty-six years of active commissioned service, including service creditable for retirement purposes under sections 432, 433, 434, of this title.

[(g) Notwithstanding subsection (f) of this section, the Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under subsection (f). An officer so retained, unless retired under some other provision of law, shall be retired on June 30 of that promotion year in which no action is taken to further retain him under this subsection.]

(f)(1) Unless retired under some other provision of law, each officer who is continued on active duty under this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes seven years of combined service in the grades of rear admiral (lower half) and rear admiral, unless that officer is selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy.

(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy, or retired under some other provision of law, an officer so retired shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

(g)(1) Unless retired under some other provision of law, an officer subject to this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes a total of thirty-six years of active commissioned service unless selected for or serving in the grade of admiral.

(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

Section 332 of that Title

§ 332. Recall to active duty with consent of officer

(a) Any regular officer on the retired list may, with **[**his**]** *that officer's* consent, be assigned to such duties as **[**he**]** *that officer* may be able to perform.

(b) The number of retired officers on active duty in the grade of lieutenant commander, commander, or captain shall not exceed **[**1**]** *2* percent of the authorized number of officers on active duty in each such grade. However, this limitation does not apply to retired officers of these grades recalled to serve as members of courts, boards, panels, surveys, or special projects for periods not to exceed one year.

Section 357 of that Title

§ 357. [Enlisted Personnel Board] ***Involuntary retirement of enlisted members***

[(a) The Commandant shall assemble annually a Coast Guard Enlisted Personnel Board, of not less than three commissioned officers on the active list, who shall recommend for retirement such enlisted members who have twenty years of service, as the Board determines, in its discretion, should be retired from active service. The recommendations of the Board shall be transmitted to the Commandant for final action. If the Commandant approves the recommendations of the Board, the enlisted members concerned shall be notified thereof in writing, and any enlisted member who, within thirty days after receipt of such notification, files with the Commandant a written protest of the action taken by the Board in his case, shall not be retired involuntarily under this section unless a subsequent annual Board again determines, in its discretion, and recommends that such enlisted member should be retired, in which case such enlisted member may, upon approval by the Commandant, be retired from active service. At the expiration of thirty days after receipt by an enlisted member of notice as aforesaid, in the event that no such protest is filed by him within the period prescribed, such enlisted member may, upon approval by the Commandant, be retired from active service. If the Commandant disapproves any recommendation of the Board the enlisted member concerned shall retain his status to the same extent as if his case had not been considered.**]**

(a) Enlisted Personnel Boards shall be convened at such times as the Commandant may prescribe to review the records of enlisted members who have twenty or more years of active military service.

(b) Enlisted members who have twenty or more years of active military service may be considered by the Commandant for involuntary retirement and may be retired upon recommendation of a Board—

(1) because the member's performance is below the standards prescribed by the Commandant, or

(2) because of moral or professional dereliction.

(c) Each enlisted member considered for involuntary retirement shall be—

(1) notified in writing of the reasons for which the member is being considered for involuntary retirement;

(2) allowed thirty days to submit any matters in rebuttal;

(3) provided counsel, certified in accordance with section 827(b) of title 10, to assist with the preparation of the rebuttal submitted pursuant to paragraph (2); and

(4) allowed full access to and furnished copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted pursuant to paragraph (2).

(d) A Board convened under this section shall consist of at least three commissioned officers, at least one of whom shall be of the grade of Commander or above.

(e) A Board convened under this section shall recommend to the Commandant enlisted members who have twenty or more years of active service and have been considered for involuntary retirement who, in its discretion, it determines should be involuntarily retired.

(f) If the Commandant approves the recommendation of the Board, the enlisted member shall be notified of the decision of the Commandant and shall be retired from the service within 90 days after such notification.

(g) This section is not applicable to reductions in force ordered by the Secretary.

[(b)]*(h)* Any enlisted member who has completed twenty years' service and who has been [retired from active duty by the Commandant pursuant to the action of an Enlisted Personnel Board] *involuntarily retired by the Commandant* shall receive retired pay.

[(c)]*(i)* Any enlisted member retired by reason of twenty years' service, whether voluntarily or involuntarily, who has been cited for extraordinary heroism in line of duty, as determined by the Secretary, whose determination shall be final and conclusive, shall be entitled to have his retired pay increased by an amount equal to 10 percent of—

(1) the active-duty pay and permanent additions thereto of the grade of rating with which retired, in the case of a member whose retired pay is computed under section 423(a) of this title; or

(2) the member's retired pay base under section 1407 of title 10, in the case of a member whose retired pay is computed under section 423(b) of this title

Section 712 of that Title

§ 712. Active duty for emergency augmentation of regular forces

[(a) Notwithstanding any other law, and for the emergency augmentation of the Regular Coast Guard forces during a time of seri-

ous natural or manmade disaster, accident, or catastrophe the Secretary may, subject to approval by the President and without the consent of the member affected, order to active duty of not more than fourteen days in any four-month period and not more than thirty days in any one-year period from the Coast Guard Ready Reserve an organized training unit, a member thereof, or a member not assigned to a unit organized to serve as a unit.]

(a) Notwithstanding any other law, and for the emergency augmentation of the Regular Coast Guard forces during a time of serious natural or manmade disaster, accident, or catastrophe, the Secretary may, without the consent of the member affected, order to active duty of not more than thirty days in any four-month period and not more than sixty days in any two-year period from the Coast Guard Ready Reserve an organized training unit, a member thereof, or a member not assigned to a unit organized to serve as a unit.

(b) through (c) * * *

TITLE 46, UNITED STATES CODE

Section 2110 of that Title

§ 2110. Fees

(a)(1) Except as otherwise provided in this title, the Secretary shall establish a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31.

(2) The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a non-self-propelled tank vessel under part B of this title that is more than $500 annually.

(3) The Secretary may, by regulation, adjust a fee or charge collected under this subsection to accommodate changes in the cost of providing a specific service or thing of value, but the adjusted fee or charge may not exceed the total cost of providing the service or thing of value for which the fee or charge is collected, including the cost of collecting the fee or charge.

(4) The Secretary may not collect a fee or charge under this subsection for any search or rescue service.

[(b)(1) The Secretary shall establish a fee or charge as provided in paragraph (2) of this subsection, and collect it annually in fiscal years 1991, 1992, 1993, 1994, and 1995, from the owner or operator of each recreational vessel that is greater than 16 feet in length.

[(2) The fee or charge established under paragraph (1) of this subsection is as follows:

[(A) for vessels greater than 16 feet in length but less than 20 feet, not more than $25;

[(B) for vessels of at least 20 feet in length but less than 27 feet, nor more than $35;

[(C) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

[(D) for vessels of at least 40 feet in length, not more than $100.

[(3) The fee or charge established under this subsection applies only to vessels operated on the navigable waters of the United States where the Coast Guard has a presence.

[(4) The fee or charge established under this subsection does not apply to a—

[(A) public vessel; or

[(B) vessel deemed to be a public vessel under section 827 of title 14.]

[(c)]*(b)* In addition to the collection of fees and charges established under [subsections (a) and (b),] *this section,* the Secretary may recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges.

[(d)]*(c)*(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section. A private enterprise or business selected by the Secretary to collect fees or charges—

(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

(B) shall provide appropriate accounting to the Secretary; and

(C) may not institute litigation as part of that collection.

(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended.

[(e)]*(d)* A person that violates this section by failing to pay a fee or charge established under this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

[(f)]*(e)* When requested by the Secretary, the Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) to a vessel for which a fee or charge established under this section has not been paid until the fee or charge is paid or until a bond is posted for the payment.

[(g)]*(f)* The Secretary may exempt a person from paying a fee or charge established under this section if the Secretary determines that it is in the public interest to do so.

[(h)]*(g)* Fees and charges collected by the Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

[(i)]*(h)* The collection of a fee or charge under this section does not alter or expand the functions, powers, responsibilities, or liability of the United States under any law for the performance of services or the provisions of a thing of value for which a fee or charge is collected under this section.

Section 3503 of that Title

§ 3503. Fire-retardant materials

(a) A passenger vessel of the United States having berth or stateroom accommodations for at least 50 passengers shall be granted a

certificate of inspection only if the vessel is constructed of fire-retardant materials. Before [November 1, 1993] *November 1, 1998*, this section does not apply to a vessel in operation before January 1, 1968, and operating only on the inland rivers.

(b)(1) When a vessel is exempted from the fire-retardant standards of this section—

(A) the owner or managing operator of the vessel shall notify prospective passengers that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas;

(B) the owner or managing operator of the vessel may not disclaim liability to a passenger for death, injury, or any other loss caused by fire due to the negligence of the owner or managing operator; [and]

(C) the penalties provided in section 3504(c) of this title apply to a violation of this subsection[.]*; and*

(D) the owner or managing operator of the vessel shall notify the Coast Guard of structural alterations to the vessel, and with regard to those alterations shall comply with any noncombustible material requirements that the Coast Guard prescribes, consistent with preservation of the historic integrity of the vessel.

(2) * * *

Section 4508 of that Title

§ 4508. Commercial Fishing Industry Vessel Advisory Committee

(a) through (d) * * *

(e)(1) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) applies to the Committee, except that the Committee terminates on September 30 [1992] *1994*. (2) Two years prior to the termination date referred to in paragraph (1) of this subsection, the Committee shall submit to Congress its recommendation regarding whether the Committee should be renewed and continued beyond the termination date.

Section 13110 of that Title

§ 13110. National Boating Safety Advisory Council

(a) through (d) * * *

(e) The Council shall terminate on [September 30, 1991] *September 30, 1996*.

INLAND NAVIGATIONAL RULES ACT OF 1980

SEC. 2. INLAND NAVIGATIONAL RULES:

PART A—GENERAL

RULE 1

Application

(a) through (d) * * *

(e) Whenever the Secretary determines that a vessel or class of vessels of special construction or purpose cannot comply fully with

the provisions of any of these Rules with respect to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, [without interfering with the special function of the vessel,] the vessel shall comply with such other provisions in regard to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, as the Secretary shall have determined to be the closest possible compliance with these Rules. The Secretary may issue a certificate of alternative compliance for a vessel or class of vessels specifying the closest possible compliance with these Rules. The Secretary of the Navy shall make these determinations and issue certificates of alternative compliance for vessels of the Navy.

(f) * * *

RULES 2 THROUGH 3 * * *

PART B—STEERING AND SAILING RULES

Subpart I—Conduct of Vessels in Any Condition of Visibility

RULES 4 THROUGH 7 * * *

RULE 8

Action to Avoid Collision

(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two

vessels are approaching one another so as to involve risk of collision.

RULES 9 THROUGH 10 * * *

Subpart II (Rules 11 through 18) * * *

Subpart III (Rule 19) * * *

Part C (Rules 20 through 31) * * *

Part D (Rules 32 through 37) * * *

Part E (Rule 38) * * *

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